SUPREME COURT, U.S.

FILED

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966.

No. 1096

PAUL DADDONA and BENJAMIN DADDONA,

Petitioners,

against

ZONING BOARD OF APPEALS OF THE CITY OF STAMFORD,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

THEODORE GODLIN,

Assistant Corporation Counsel
of the City of Stamford,
Attorney for Respondent.

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To the Justices of the Supreme Court of the United States:

The Respondent Zoning Board of Appeals of the City of Stamford respectfully requests denial of the Petition for Writ of Certiorari in the above cited appeal. The purpose of said petition is to have this Court review a ruling of the Supreme Court of Connecticut dismissing an appeal to it upon a zoning matter for lack of proper diligence under its own

rule as set forth in Connecticut Practice Book, Section 696, set forth in Appendix "A" hereof.

OPINION BELOW.

The ruling of the Supreme Court of Connecticut which petitioners seek to have reviewed is set forth in Appendix "B" hereof.

QUESTION PRESENTED.

Whether the Supreme Court of the United States should review an order of the Supreme Court of Connecticut dismissing a zoning appeal for lack of proper diligence when said order was made pursuant to one of the procedural rules of said Supreme Court of Connecticut, specifically, Section 696 of the Connecticut Practice Book?

STATEMENT OF FACTS.

This case began on February 28, 1963, when the Zoning Enforcement Officer of the City of Stamford issued an order to the petitioners herein to cease occupancy of a certain building of the petitioners by four-families when under the Zoning Regulations of the City of Stamford only two families are allowed in said building. Upon appeal of said order to the Zoning Board of Appeals of the City of Stamford, said Board upheld and modified the order of the Zoning Enforcement Officer. Upon appeal of said decision to the Court of Common Pleas of Fairfield County, said Court decided on January 14,

1966, that the Zoning Board of Appeals had acted reasonably in upholding the order of the Zoning Enforcement Officer.

An appeal was then taken by the petitioners herein to the Supreme Court of the State of Connecticut and during the pendency of said appeal, the petitioners requested upon two occasions extensions of time in which to file their briefs.

On November 1, 1966, the Supreme Court of Connecticut, upon its own motion, dismissed the appeal of the petitioners herein for failure to prosecute with proper diligence under Section 696 of the Practice Book of Connecticut.

REASONS WHY THE WRIT OF CERTIORARI SHOULD NOT BE GRANTED.

The case of **Johnson v. State of New Jersey,** 86 S. Ct. 1772, 384 U.S. 719, 16 L. Ed. 2d 882 (N.J. 1966), recently decided by this Court, held in part that where the New Jersey Supreme Court invoked a state procedural rule as a bar to a reconsideration of a petitioner's claim, said judgment would not be reviewed by this Court. The Court stated, "This is an adequate state ground which precludes us from testing the coerced confession claim on the present review, whatever may be the significance of the state court's reliance on its procedural rule in federal habeas corpus proceedings." Supra, 16 L. Ed. 882, 893.

It is well settled that the Supreme Court of the

United States does not ordinarily re-examine the local law as applied by local courts. See **Skelly Oil Company v. Phillips Petroleum Co.**, 70 S.Ct. 876, 339 U.S. 667, 94 L.Ed. 1194 (Okl. 1950).

The case at Bar is controlled by the above rules. This case arose as a local zoning matter. The Supreme Court of the State of Connecticut dismissed the appeal from a lower court judgment upholding the decision of the Zoning Board of Appeals of the City of Stamford, invoking Section 696 of the Rules of the Supreme Court. It is a principle of the law of Connecticut that an appeal to the courts from the action of administrative officers or boards exists only as a privilege granted by statutory authority. **Bardes v. Zoning Board of the City of Stamford,** 141 Conn. 317, 106 A2d 160, (1955). As such, said privilege is conditional upon full compliance with the statutes.

The petitioners for this Writ of Certiorari are in effect requesting this Court to re-examine the interpretation made by the State Supreme Court of its own rules. There is nothing in the record to show that said interpretation was capricious. Under these circumstances, this Court should not, under the above cited decisions, review the matter.

The case of **Griffin v. Illinois,** 76 S. Ct. 585, 351 U.S. 12, 100 L. Ed 891, cited by petitioners, is not strictly in point. That case involved a situation where the right of appeal by an indigent defendant was effectively taken away by a rule requiring a printed transcript. There is no such question in the case at Bar. The Connecticut rule requiring diligence in prosecuting an appeal applies to all appellants uni-

formly and cannot be invoked if there are no delays. The only question here presented is whether the state court may dismiss an appeal for lack of proper diligence under its rule. The petitioners were in no way denied their privilege of appeal — but they were expected and required to comply with the procedural requirements for perfecting such an appeal.

Wherefore, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

ZONING BOARD OF APPEALS OF
THE CITY OF STAMFORD,

By THEODORE GODLIN,
Assistant Corporation Counsel,
Attorney for the Respondent.